

ARTICLE APPEARED  
ON PAGE 19

THE NEW YORK TIMES  
27 February 1978

# Human Rights At Home

By Anthony Lewis

BOSTON, Feb. 26—For 20 years, from 1953 to 1973, the C.I.A. secretly went through bags of international mail in New York and other postal centers, opened first-class letters to and from Americans and made copies. Altogether it copied at least 215,000 letters and fed 1.5 million names gleaned from the mail-opening project into computers.

Last August three citizens whose letters had been opened won a suit against the Government for invasion of their privacy. Federal Judge Jack B. Weinstein of Brooklyn awarded the three victims \$1,000 each in damages. Judge Weinstein wrote:

"In this country we do not pay lip service to the value of human rights and individual dignity—we mean to live by our ideals."

The Department of Justice—Jimmy Carter's Department of Justice—is now appealing that decision. A department brief says it "will not argue that the actions of the C.I.A. in this case were legal or constitutional." But Federal law, it argues, gives the victims no remedy against the Government. And in any event, \$1,000 in damages was "excessive."

The case is one more example of a depressing trend in the Carter Administration. While the President and others rightly talk about the importance of his human rights policy abroad, the Justice Department reacts with insensitivity and pettifoggery on issues of civil liberty at home.

One thing made this an especially compelling case. Although the final decision in damage suits against the Government is left to judges, Judge Weinstein had an advisory jury hear the evidence and give its opinions. Three jurors wanted to award \$10,000 to each plaintiff, one suggested \$2,500, and the other eight called for \$5,000.

In effect, there was an extraordinary statement of public feeling about Government wrongdoing. Some jurors, when polled, said specifically that it was important to show the Government it could not trample on people's rights and get away with it. "It was instructive," Judge Weinstein said, that jurors of sharply different backgrounds all found that the mail-opening victims had "suffered substantial damages."

The three people involved in the case had no idea originally that their mail had been opened. Each made a general request under the Freedom of Information Act to see what the C.I.A. had under his or her name, and was told that a personal letter was in the files. Then each sued.

Norman Birnbaum, professor of sociology at Amherst, wrote to a faculty member at Moscow University in 1970 about an upcoming conference on the sociology of religion. The letter was opened and four copies distributed to various C.I.A. units that had, it was said, an "interest" in correspondence to and from Moscow University.

Mary Rule MacMillen wrote in 1973 to a well-known dissident whom she had met on a visit to the Soviet Union. His name was on a C.I.A. watch list. Because the letter was personal, it was agreed at the trial that the name would not be disclosed.

B. Leonard Avery had a letter in 1968 from his son, who was an exchange student at a Soviet University. The C.I.A. made three copies and sent one to the F.B.I., which had "an interest in U.S. exchange students in Russia."

The jury suggested that the Government apologize to the three victims, and Judge Weinstein held the damages to \$1,000 on condition that it do so. He said that would help restore "faith in our Democratic institutions." Last November Stansfield Turner, the C.I.A. director, wrote to "express my regret at any intrusion into your privacy." He added an assurance that the agency is not today opening mail in U.S. postal channels.

Then the Justice Department decided to appeal. Its brief argues that these suits are barred by a provision of the Tort Claims Act excluding

claims against the Government for damages suffered when an official performed "a discretionary function."

Judge Weinstein held that that exception did not apply when an official act was illegal, as he found the mail-opening was. He said.

"There is no discretion under our system to conceive, plan and execute an illegal program."

The Government brief also argues that this case falls within a Tort Claims Act exclusion of suits for "loss, miscarriage or negligent transmission of letters." It says that these letters "miscarried."

Of course the Justice Department has the right to appeal. The question is whether it is wise to do so in such a case—wise to press an argument as petty as the idea that opening and copying personal letters is just "miscarriage" of the mail.

There is a special irony in this case. Many victims of Government illegality have sued the individual officials responsible. Attorney General Griffin Bell regards such suits as too burdensome. He has proposed legislation to bar them and make everyone sue the Government itself for damages. Here three people did exactly that, and Griffin Bell tells them that they may have a right, but they don't have a remedy.